

**IN RE NORMA J. ECHEVARRIA
AND FRANK J. ECHEVARRIA
D/B/A ECHECO ENVIRONMENTAL SERVICES**

CAA Appeal No. 94-1

FINAL DECISION

Decided December 21, 1994

Syllabus

Norma J. Echevarria and Frank K. Echevarria, doing business as Echeco Environmental Services ("Echeco"), appeal the assessment against them of a \$9,450.00 civil penalty for being found in violation of certain work practice standards relating to the removal of asbestos-containing materials. The presiding officer determined that the material removed by Echeco was not "adequately wet" in accordance with the standards, since dust was emitted from a block of the material upon inspection by an EPA inspector who found it lying unbagged on the floor of the removal site. As a threshold matter, Echeco contends that the work practice standards are unconstitutionally vague and therefore unenforceable. Secondly, even if the standards are enforceable, Echeco disputes the fact that a violation occurred, asserting that the presiding officer's ruling is not supported by a preponderance of the evidence because it rests solely on the testimony of the EPA inspector, which by itself is not a sufficient basis upon which to sustain the charges.

Held: The initial decision of the presiding officer is affirmed. Echeco failed to demonstrate any compelling circumstances justifying review of its claim that the work practice standards are unconstitutionally vague and unenforceable. Moreover, as a practical matter, its claim is effectively barred from administrative review as a matter of right by Clean Air Act § 307(b), the statutory provision precluding untimely judicial review of duly promulgated emission and work practice standards. In addition, the presiding officer did not err by relying on the inspector's testimony, which was unrefuted and not shown to be unreliable.

***Before Environmental Appeals Judges Nancy B. Firestone,
Ronald L. McCallum, and Edward E. Reich.***

Opinion of the Board by Judge McCallum:

On December 22, 1993, Chief Administrative Law Judge Henry B. Frazier, III issued an initial decision finding Norma J. Echevarria and Frank K. Echevarria, doing business as Echeco Environmental Services ("Echeco"), liable for violating Clean Air Act § 112, 42 U.S.C. § 7412, and certain regulations appearing at Subpart M (National Emission Standard for Asbestos) of the National Emission Standards for Hazard-